

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD R. COSS, JR.,	:	CIVIL ACTION NO. 1:CV-01-0878
	:	
Petitioner	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
JAMES P. MORGAN, et al.,	:	
	:	
Respondents	:	

**FILED
SCRANTON**

OCT 13 2004

ORDER

PER  **DEPUTY CLERK**

On May 17, 2001, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). On September 30, 2004, Petitioner filed an Amended Petition. (Doc. 24). The petition presents grounds attacking his conviction or the sentence imposed or both. The sentence was imposed by the Court of Common Pleas of Lackawanna County.

In accordance with *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999) and *Mason v. Meyers*, 208 F.3d 414 (3d Cir. 2000), the Petitioner is advised that he can have the petition ruled on as filed, but in that event lose his ability to file a second or successive petition(s) absent certification by the Court of Appeals, or withdraw his petition and file one, all-inclusive § 2254 petition within the one-year statute of limitations period prescribed by the Antiterrorism Effective Death Penalty Act of 1996.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Petitioner shall, within forty-five (45) days of the date of this order, complete and file with the Court at Clerk of Court, United States District Court for the Middle District of Pennsylvania, P.O. Box 1148, Scranton, PA 18501, the attached Notice of Election; and

2. Failure of petitioner to comply with this order will result in the court ruling on the motion, document, or pleading as captioned.



THOMAS M. BLEWITT
United States Magistrate Judge

Dated: October/3 2004

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JAMES P. MORGAN, et al.,	:	
	:	
Respondents	:	

NOTICE OF ELECTION

I, _____, Petitioner in the above-captioned action, have read the Order of Court which accompanied this form notice. Pursuant to that order, I elect to proceed in this action as follows:

- _____ I have not labeled my motion, petition or pleading as a petition under 28 U.S.C. § 2254. I choose to have the court rule on my motion, petition, or pleading as filed. I understand that the failure to bring the motion, petition or pleading under 28 U.S.C. § 2254 may be a basis for denial or dismissal of the motion, petition, or pleading.
- _____ I have not labeled my motion, petition or pleading as a petition for writ of habeas corpus under 28 U.S.C. § 2254. I choose to have my motion, petition, or pleading recharacterized as a petition under 28 U.S.C. § 2254. I understand that by doing so I lose my ability to file a second or successive petition absent certification by the Court of Appeals, and that the potential for relief is further limited in a second or successive petition.
- _____ I have not labeled my motion, petition, or pleading as a petition under 28 U.S.C. § 2254. I choose to withdraw my petition so that I may file one, all-inclusive petition under 28 U.S.C. § 2254 within the one-year limit for filing such a pleading.
- _____ I have labeled my petition as a petition under 28 U.S.C. § 2254. I choose to have the court rule on my petition as filed. I understand that I may be

forever barred from presenting in federal court any claim not presented in this petition. I further understand that by doing so I lose my ability to file a second or successive petition absent certification by the Court of Appeals, and that the potential for relief is further limited in a second or successive petition.

_____ I have labeled my petition as a 28 U.S.C. § 2254 petition. I choose to withdraw my petition so that I may file one, all-inclusive petition under 28 U.S.C. § 2254 within the one-year limit for filing such a petition.

YOUR ELECTION ON THIS FORM, AS WELL AS THE FAILURE TO MAKE AN ELECTION, WILL BE BINDING ON YOU WITH REGARD TO YOUR LITIGATION IN FEDERAL COURT OF ANY CLAIM RELATED TO THE CUSTODY YOU HAVE CHALLENGED. READ CAREFULLY THE ORDER ACCOMPANYING THIS NOTICE OF ELECTION FORM.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(Date)

(Signature of Petitioner)